

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEBORAH W.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C19-747 BAT

**ORDER AFFIRMING THE
COMMISSIONER'S DECISION AND
DISMISSING THE CASE WITH
PREJUDICE**

Plaintiff appeals the denial of her application for Disability Insurance Benefits. She contends the ALJ erred by (1) declining to adopt as a functional limitation the statement by examining psychologist Diana Cook, Ph.D., that “[c]laimant likely is not able to handle a high level of stress at this time,” and (2) discounting plaintiff’s testimony about her inability to handle stress. Dkt. 8; Tr. 580. The Court **AFFIRMS** the Commissioner’s final decision and **DISMISSES** the case with prejudice.

BACKGROUND

Plaintiff is currently 67 years old and stopped working as a medical secretary after she had two strokes in May and June of 2016. She applied for benefits, alleging disability as of May 6, 2016. In a May 2018 decision, the ALJ determined that plaintiff had **the severe impairments of late effects of cerebrovascular accident (“CVA”), diabetes mellitus, hypertension, and**

1 **obesity**; that plaintiff had **the residual functional capacity (“RFC”)** to perform light work
2 **with additional physical restrictions**; that plaintiff could perform her past relevant work as a
3 medical secretary; and that plaintiff was not disabled. Tr. 15–29.

4 **DISCUSSION**

5 The Court will reverse the ALJ’s decision only if it was not supported by substantial
6 evidence in the record as a whole or if the ALJ applied the wrong legal standard. *Molina v.*
7 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). The ALJ’s decision may not be reversed on account
8 of an error that is harmless. *Id.* at 1111. Where the evidence is susceptible to more than one
9 rational interpretation, the Court must uphold the Commissioner’s interpretation. *Thomas v.*
10 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

11 Plaintiff has failed to demonstrate that the ALJ’s decision (1) not to include in the RFC
12 assessment Dr. Cook’s reference to an inability to handle a high amount of stress “at this time”
13 and (2) to discount plaintiff’s self-report of an inability to handle stress was unreasonable,
14 unsupported by substantial evidence, or based on harmful legal error.

15 **1. Examining Psychologist Dr. Cook’s Statement About High Stress**

16 Plaintiff argues that the ALJ erred by affording significant weight to the opinion of
17 examining psychologist Dr. Cook yet failing to account in the RFC assessment for Dr. Cook’s
18 statement about plaintiff’s likely inability to handle high stress “at this time.” The Court finds
19 that the ALJ erred by not more fully discussing Dr. Cook’s statement regarding plaintiff’s
20 inability to handle stress. Nonetheless, this error was harmless because the ALJ supported the
21 conclusion that plaintiff suffered from no severe mental impairments with substantial evidence
22 and this conclusion remains unchallenged.

1 Dr. Cook conducted a psychological evaluation of plaintiff in mid-August 2016, i.e., a
2 little more than two months after plaintiff's second stroke in early-June 2016. Tr. 573. Dr. Cook
3 diagnosed status post-stroke and depressed mood secondary to the stroke. Tr. 579. Dr. Cook
4 noted that plaintiff seemed to be faring "quite well" following her strokes, "despite a *mildly*
5 depressed mood." Tr. 579 (emphasis added). Dr. Cook noted that plaintiff reported a "fairly
6 active lifestyle," though that lifestyle was "quieter and less interactive than when she was
7 working." Tr. 579–80. Dr. Cook opined that plaintiff's "prognosis for re-gaining psychological
8 well-being is good," and that plaintiff "might benefit from some supportive psychotherapy,
9 depending on her continued positive recovery trajectory." Tr. 580. In full, Dr. Cook's functional
10 assessment was:

11 Claimant is able to handle her own finances. She is able to take
12 instruction, complete simple and repetitive, as well as more
13 complex tasks during the intellectual portion of the exam. She
14 seems quite able to get along with others. Claimant ... is intelligent
and seemingly well able to complete tasks without intervention or
special instruction. **Claimant likely is not able to handle a high
level of stress at this time.**

15 Tr. 580 (emphasis added).

16 The ALJ accurately restated Dr. Cook's functional assessment, including Dr. Cook's
17 statement: "Claimant is not able to handle a high level of stress at this time."¹ Tr. 21. Moreover,
18 the ALJ gave considerable weight to Dr. Cook's opinion. Tr. 21 (quoting Tr. 580). The ALJ did
19 not, however, include any reference to plaintiff's inability to handle stress, or any related mental
20 limitation, in the RFC assessment. The Court agrees with plaintiff that the ALJ erred by not
21 explicitly stating why Dr. Cook's statement regarding plaintiff's inability to handle high stress
22 "at this time" was rejected while Dr. Cook's opinion was otherwise given considerable weight.

23 ¹ In fact, the ALJ removed the qualifier "likely" from "is not able."

1 Nonetheless, the Court finds this error to be harmless because the ALJ clearly determined that
2 Dr. Cook's reference to plaintiff's inability to handle high stress was a time-delimited, rather
3 than continuing, limitation that had resolved itself to a degree that did not impede the ability to
4 perform work.

5 The ALJ accurately noted that during Dr. Cook's mental status examination, plaintiff's
6 thought content, orientation, memory, fund of knowledge and information, calculations,
7 concentration, abstract thinking, similarities and differences, and judgment and insights were all
8 normal. Tr. 21 (citing Tr. 575). The ALJ observed that other mental status examinations showed
9 that plaintiff had a consistent mood and manner that was appropriate. Tr. 21 (citing Tr. 435
10 (6/8/2016), 586 (11/16/2016), 597 (8/18/2016), 640 (11/16/2016), 659 (1/6/2017)). The ALJ
11 observed that by January 2017, plaintiff reported no depression, was in no distress, and had an
12 appropriate mood. Tr. 21 (citing Tr. 660). The ALJ considered four broad areas of areas of
13 mental functioning—understanding, remembering, or applying information; interacting with
14 others; concentrating, persisting, or maintaining pace; and adapting or managing oneself—and
15 determined that plaintiff had no more than a mild limitation in any area. Thus, viewed in the
16 context of the ALJ's unchallenged analysis that plaintiff suffered from no severe mental
17 impairments, it was reasonable for the ALJ to have determined *sub silentio* that Dr. Cook's
18 reference to an inability to handle a high level of stress "at this time" meant that such a limitation
19 was temporary in nature. *See generally Rounds v. Commissioner of SSA*, 807 F.3d 996, 1006 (9th
20 Cir. 2015) ("An ALJ may rationally rely on specific imperatives regarding a claimant's
21 limitations, rather than recommendations."). That the ALJ concluded that plaintiff's mental
22 impairments had resolved within a shorter time frame than alleged is further supported by the
23 ALJ's rejection of lay testimony by plaintiff's husband because it occurred before plaintiff had

1 recovered much of her pre-stroke functioning, Tr. 28, and by the ALJ reference to plaintiff's
2 treating physician providing only for an eight-week absence from work after plaintiff had
3 suffered her first stroke in May 2016, Tr. 26.²

4 The Court finds that the ALJ's failure to explicate why Dr. Cook's statement about
5 plaintiff's inability to handle a high level of stress "at this time" was omitted from the RFC
6 assessment constituted harmless error.

7 **2. Plaintiff's Testimony About Stress**

8 Plaintiff argues that the ALJ improperly discounted her testimony about her inability to
9 handle stress. The Court finds that the ALJ discounted plaintiff's testimony for at least two
10 specific, clear and convincing reasons supported by substantial evidence: inconsistency with her
11 reports to medical providers; and inconsistency with the medical record. *See* 20 C.F.R. 404
12 1529(c); *see Molina*, 674 F.3d at 1112.

13 First, the ALJ discounted plaintiff's testimony about disabling stress because it was
14 inconsistent with her reports to providers. Tr. 26. Plaintiff had only one office visit for any
15 concerns related to her stroke after January 2017 and did not report difficulties related to stress.
16 Tr. 26, 650–713. At her February 2018 wellness visit, plaintiff did not mention any issues related
17 to stress and reported no issues with memory. Tr. 26, 708–13. Second, although plaintiff here
18

19 ² As plaintiff notes, the ALJ did not, however, acknowledge that plaintiff's treating physician
20 provided for a yearlong absence of work after plaintiff suffered her second stroke in June 2016.
21 Dkt. 8, at 9; *see* Tr. 43. The treating physician did not explain the basis for this lengthier absence
22 besides noting that plaintiff had suffered a second stroke, "[r]eccovery is unpredictable," and
23 "[f]ull recovery is possible but will be slow." Tr. 43. To the extent the ALJ erred by failing to
recognize that plaintiff's treating physician had proposed a year-long absence of work, the Court
finds this omission to be harmless because, without challenge, the ALJ rejected any severe
mental impairments and because the treating physician's June 2016 opinion did not refer to an
inability to handle stress and was "brief, conclusory, and inadequately supported by clinical
findings" regarding mental health. *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002).

1 focuses entirely on the question of stress, the ALJ's discussion must be viewed in the context of
2 the ALJ's unchallenged rejection of anything greater than mild mental limitations, a conclusion
3 supported by the entirety of the medical record as well as Dr. Cook's examining opinion, which
4 can be reasonably construed as contradicting plaintiff's complaints of difficulties with memory
5 and other mental functioning and suggesting that plaintiff's intolerance to stress was temporary.

6 Plaintiff argues that she should not be penalized for not reporting stress after ceasing to
7 work because it follows that she was no longer exposed to stress and would not be able to
8 tolerate her return to a fast-paced environment working as a medical secretary. Dkt. 10, at 4.

9 Although this assertion is plausible, it does not relieve plaintiff of the burden to demonstrate that
10 she suffers from disabling stress because "the ALJ is not required to believe every allegation of
11 disabling [symptoms], or else disability benefits would be available for the asking, a result
12 plainly contrary to 42 U.S.C. § 423(d)(5)(A)." *Molina*, 674 F.3d at 1112 (internal marks and
13 citation omitted).

14 The Court finds the ALJ discounted plaintiff's testimony about her inability to tolerate
15 stress for at least two specific, clear and convincing reasons supported by substantial evidence.

16 CONCLUSION

17 For the foregoing reasons, the Commissioner's decision is **AFFIRMED** and this case is
18 **DISMISSED** with prejudice.

19 DATED this 29th day of October, 2019.

20
21 
22 BRIAN A. TSUCHIDA
23 Chief United States Magistrate Judge